

Public Hearing Questions for
Judicial Performance Evaluation Commission
Created by Section 17-4-201, *Tennessee Code Annotated*
(Sunset termination June 30, 2012)

1. **Provide a brief introduction to the commission including information about its purpose, statutory duties, staff and administrative attachment.**

The Judicial Performance Evaluation Commission is a diverse group of Tennesseans who are charged with the statutory duty of assisting the public in evaluating the performance of incumbent appellate judges. The commission utilizes information gathered from the evaluated judge, other appellate judges, trial judges, and attorneys and court personnel who interact with the evaluated judge, as well as public comment, randomly selected written opinions and personal interviews to form an evaluation and a recommendation “for retention” or “for replacement” as required by law. The commission prepares a report that includes an evaluation of the judge and the recommendation that is published and made available in March prior to an election and printed and distributed in Sunday newspapers one month prior to an election. The commission is attached to the Administrative Office of the Courts. An Assistant General Counsel of the AOC provides primary staff assistance to the commission with assistance from administrative staff as needed.

2. **Provide a list of current members of the commission and describe how membership complies with Section 17-4-201(b), *Tennessee Code Annotated*. Who appoints members? Are there any vacancies on the commission? If so, what steps have been taken to fill the vacancies?**

The current membership of the commission consists of five appointments by the Judicial Council (3 state court judges, 1 attorney and 1 non-attorney, no more than 2 residing in the same grand division), two appointments by the Speaker of the Senate (1 attorney and 1 non attorney, each residing in a different grand division) and two appointments by the Speaker of the House (1 attorney and 1 non-attorney, each residing in a different grand division).

E. Riley Anderson – appointed by Judicial Council, Attorney, East Tennessee. Mr. Anderson’s term expires August 9, 2011. Because the Judicial Council no longer exists and appointing authority was not addressed during the 2011 legislative session, the Attorney General advises that Mr. Anderson will hold over until his success can be appointed.

John Day, Esq. – appointed by the Speaker of the House, Attorney, Middle Tennessee. Mr. Day’s term expires on August 2, 2011. No successor been named as of the date of this report.

John T. Fowlkes, Jr. – appointed by Judicial Council, State Court Judge, West Tennessee

Henrietta Grant – appointed by Speaker of the House, Non-Attorney, East Tennessee

J. Gregory Grisham, Esq. – appointed by Speaker of the Senate, Attorney, West Tennessee

Amy Reedy – appointed by Judicial Council, State Court Judge, East Tennessee

Renata Soto – appointed by Judicial Council, Non-Attorney, Middle Tennessee

Michael E. Tant – appointed by Speaker of the Senate, Non-Attorney Middle Tennessee

As mentioned in the listings above, the term of Mr. Day is expiring shortly after the preparation of this report. The Speaker of the House has been notified of the expiration of term and necessary appointment. The term of Mr. Anderson is expiring shortly after the preparation of this report. Because the appointing entity no longer exists, the Attorney General was consulted. The commission was advised that Mr. Anderson should hold over until his successor can be appointed.

There is currently one vacancy on the commission. Former Circuit Court Judge Jeff Bivins served as a State Court Judge member of the commission from Middle Tennessee, appointed by the Judicial Council. Judge Bivins was appointed by Governor Haslam to the Court of Criminal Appeals and is no longer eligible to serve on the commission. As the Judicial Council no longer exists, there is no appointing authority for Judge Bivins' successor.

3. Does the commission's membership include female members? Members of a racial minority? Members who are 60 years of age or older?

The commission has three female members. The commission has two African-American members and one Hispanic member. The commission has two members over age 60.

4. How many times did the commission meet during the fiscal years 2010 and 2011? How many members were present at each meeting?

The Commission met 14 times during fiscal years 2010 and 2011. The meetings and number of attendees at each are as follows:

September 15, 2009 – 8 attendees
September 23, 2009 – 9 attendees
November 6, 2009 – 9 attendees
November 17, 2009 – 7 attendees
February 12, 2010 – 6 attendees
April 14, 2010 – 8 attendees
July 21, 2010 – 7 attendees

November 3, 2010 – 6 attendees
November 9, 2010 – 9 attendees
November 10, 2010 – 9 attendees
November 30, 2010 – 9 attendees
December 1, 2010 – 9 attendees
December 10, 2010 – 5 attendees
December 20, 2010 – 7 attendees

January 16, 2011 – 5 attendees

- 5. What per diem or travel reimbursement do members receive? How much was paid to members during fiscal years 2010 and 2011? What were the commission's total revenues (by source) and expenditures (by object) during the same period?**

Reimbursable lodging expenses are reimbursed at the single occupancy room rate or the approved conference room rate. Mileage is reimbursed at the current state rate of \$.46 per mile. Reimbursement for in-state meals and incidentals is in accordance with the CONUS rate for Tennessee.

2010 Expenses:

Travel \$ 2,137.92

Professional Services \$ 64,005.90 (Newspaper publication as required by statute)

Supplies \$86.00

Total \$66,229.82

2011 Expenses:

Travel \$6,989.52

Professional Services \$74,543.47 (Newspaper publication as required by statute)

Supplies \$1,050.30

Total \$82,583.29

This program does not generate any revenue.

- 6. Is the commission subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meeting, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the commission have for informing the public of its meetings and making its minutes available to the public?**

The commission is subject to Sunshine law requirements. The commission publishes notices of all of its meetings at least fourteen (14) days prior to the meeting date. Notices are published on the Administrative Office of the Courts website, distributed to the Tennessee Bar Association and local bar associations and posted in legislative plaza. Minutes are timely prepared and recorded. Minutes are available to the public upon request of the Administrative Office of the Courts.

- 7. Describe the nature and extent of the commission's activities and any major accomplishments for the past two years. How many judicial performance evaluations did the commission perform during that period?**

The commission met on a number of instances, as indicated above. The commission conducted the evaluations of Justice Sharon Lee and Judge John McClarty, recommending retention on each, for the August 2010 general election. The commission then conducted a mid-term evaluation for each appellate judge who volunteered to participate. This gave the commission the opportunity to test and evaluate the use of electronic, online surveys, which could result in a significant savings for future evaluations in postage and survey vendor costs. Of twenty-nine (29) appellate judges, twenty-five (25) participated in the evaluations. While these mid-term evaluations did not result in a retention recommendation or a published evaluation report, it was a valuable self-improvement tool for the evaluated judges, an opportunity for new members of the commission to participate in the evaluation process and an opportunity to examine the evaluation process to determine ways to improve its efficiency and effectiveness and to reduce its costs.

The Commission will conduct two evaluations in the near future. The first is the evaluation of recently appointed Court of Criminal Appeals Judge Jeff Bivins. The second will be a yet to be appointed Court of Criminal Appeals Judge for the Western Section of the court.

8. Does the commission have policies in place to address potential conflicts of interest by commission members or those acting as staff to the commission?

The commission has adopted bylaws which include the following section concerning potential conflicts of interest:

In the performance of their duties, Judicial Performance Evaluation Commission members should be ever mindful that they hold positions of public trust. Commission members should not conduct themselves in a manner which reflects discredit upon the judicial evaluation process. Evaluation of appellate judges should be impartial and objective, without regard to political affiliations.

A Commission member should disclose to other Commission members any personal or business relationship with an evaluated appellate judge that may directly or indirectly influence his or her decision. It is anticipated that Commission members may know, or have information about evaluated appellate judges. Often, a Commission member may have worked with or against, argued cases before, had matters reviewed on appeal by, or otherwise have contact with an evaluated appellate judge. Such contact does not disqualify a Commission member from taking part in interviews or voting.

Further, a Commission member is not disqualified from participation in interviews or recommendation votes because a matter is pending before an evaluated judge in which a Commission member is a party, attorney of record or was the presiding judge at the trial court. Such circumstances must be disclosed to the full Commission. However, a Commission member who has a matter pending before an evaluated judge may request to be excused by the Chairperson.

9. Describe the commission's judicial performance evaluation program. What criteria are used to evaluate judges? What types of information do commission members review and what types of independent investigations or inquiries are conducted?

The judicial performance evaluation program conducts surveys of attorneys, trial judges, other appellate judges and court personnel (administrative assistants, law clerks and court clerks) concerning an evaluated judge. Surveys ask a number of questions in the areas of oral argument, written opinions, general performance and overall evaluation to which the respondent provides a numerical rating from 1-10 (1 being poor and 10 being excellent). Attorney surveys are distributed to attorneys who have had a case decided by a panel on which a judge has participated. Judges are provided an opportunity to blindly exclude responses from attorneys which the judge has sanctioned, reported to the Board of Professional Responsibility or has a conflict. Survey reports are prepared and distributed to commission members. A copy of the survey report on the evaluated judge is sent to the evaluated judge.

Commission members review randomly selected opinions written by the judges. The opinion review is to assist the evaluation of the quality of written opinions.

Evaluated judges are asked to complete a Self-Reporting Form, which includes biographical, educational and occupational information. It also asks for information on current caseload, extra-judicial activities, speaking engagements and published articles, treatises or books.

Reports on caseload statistics are generated and examined from the appellate case management system to assist the commissioners in evaluating the timeliness of case disposition.

The commission solicits public comment on the evaluated judges by posting notices on the website of the Administrative Office of the Courts, submitting a public comment notice to bar associations and posting notices in legislative plaza.

Finally, the commission conducts an in person interview with the evaluated judge, during which questions about the survey report, written opinions and other useful evaluation information are discussed. From these components, a draft evaluation is prepared and approved by the full commission, including a recommendation on retention. Judges are evaluated on the criteria of integrity, knowledge and understanding of the law, ability to communicate, preparation and attentiveness, service to the profession and the public and effectiveness in working with other judges and court personnel.

10. What procedures does the commission have in place to ensure that the confidentiality of information (other than the final report) and the anonymity of survey respondents are protected as required by Section 17-4-201(a)(3), *Tennessee Code Annotated*?

All documents and other information received that is confidential are filed in a separate file for the commission's confidential materials. If requests are made for commission documents, a determination is made whether the requested materials are confidential and a response is provided accordingly.

During the evaluation of judges for the 2010 published report, an out of state vendor mailed surveys, collected the survey responses, compiled a survey report that did not identify respondents, and provided the report to the commission.

During the midterm evaluation, which did not result in a published report, surveys were conducted via an online survey tool as a pilot project. The collection of email addresses and/or IP addresses of survey respondents is not incorporated to the report and is only visible if an optional setting is set to show such information. The online survey tool is password protected and only accessible by the sole JPEC staff person. Staff prepared a report which kept respondent information anonymous and provided the report to the commission.

- 11. What complaints, if any, have been received in the past two years regarding the commission's actions? How have these complaints been resolved?**

NONE

- 12. Section 17-4-201(a)(4)(A) and (B), *Tennessee Code Annotated*, provides time periods within which drafts of the commission's evaluations are to be provided to incumbent appellate judges for their review and to give them an opportunity to comment or respond to the evaluation. Describe the processes the commission has in place to deal with situations where the judge being evaluated challenges the accuracy or quality of the evaluation. Are the current time limits sufficient to ensure that the judge has sufficient time to respond and the commission has time to take additional actions if needed?**

The commission takes great care to comply with the time periods described in the relevant code sections, calendaring meetings and deadlines associated with drafting evaluation reports such that draft reports are able to be provided in advance of the deadlines required. While this can be challenging when an appointment may occur at such a time where an evaluation is due within days of an appointment, the commission members remain flexible and committed to meeting all deadlines. The time limits are sufficient for ensure the receipt of processing of responses, as well as any actions that may be necessary as a result of the response.

The commission delivers, along with a draft evaluation, a page that is to be returned to the commission. The page acknowledges receipt of the draft report and provides several options available to the evaluated judge. First, the judge may respond that he/she has no proposed corrections and does not wish to provide a written or oral response to the report. The judge may offer corrections to the report that are considered by the commission, whereupon the judge is notified of the incorporation of the correction. The judge may

offer a written response to the report, which is published along with the report. Finally, the judge may request to respond orally. If oral response is requested, a meeting of the commission is scheduled at which the judge may provide a response and the commission will consider any amendment or addendum to the report based upon the response.

- 13. Two justices or judge were scheduled for evaluation and retention votes and were included by the commission in the 2010 evaluation report (available and reviewed online at http://www/tsc.state.tn.us/sites/default/files/docs/jpec_evaluations_2010.pdf). In what year are the next appellate or supreme court judges scheduled for evaluation and retention votes?**

The commission will evaluate newly appointed Court of Criminal Appeals Judge Jeff Bivins in December. Judge Bivins will appear on retention election ballot in August 2012. In addition, there is currently a vacancy on the Court of Criminal Appeals for which the Governor is considering nominees for appointment. The judge appointed to this position, assuming appointment prior to July 2012, will appear on the August 2012 general election ballot for retention election. The Judicial Performance Evaluation Commission will conduct an evaluation for this judge in accordance with the deadlines applicable based upon the date of appointment. There are no other judges currently scheduled to appear on the 2012 general election ballot. All appellate judges and justices will appear on the August 2014 general election ballot. Therefore, the Judicial Performance Evaluation Commission will evaluate all appellate judges prior to the August 2014 election.

- 14. Describe any items related to the commission that require legislation attention and your proposed legislative changes.**

The only item relating to the commission that requires legislative attention concerns the appointing authority of five (5) of its nine (9) members. Five (5) members are appointed by the Judicial Council, which has sunset and terminated. The commission has no proposed legislative change concerning this issue.

- 15. Should the commission be continued? To what extent and in what ways would the absence of the commission affect the public health, safety and welfare?**

The Judicial Performance Evaluation Commission should be continued. An integral part of the retention election of appellate judges, the commission publishes a report that provides insight on appellate judges to the voting public. To many members of the public, the JPEC report is the only information that may be available concerning appellate court judges. Therefore, the commission provides an invaluable service to the electorate.

- 16. Please list all commission programs or activities that received federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.**

NONE

- 23. Please provide a breakdown of current commission staff by title, ethnicity, and gender.**

The commission is assigned one staff person, a Caucasian male who serves as Assistant General Counsel for the Administrative Office of the Courts. Providing staff assistance to the Judicial Performance Evaluation Commission is one of a many duties performed by this staff member.

- 24. Please list all commission contract, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.**

NONE